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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,476	09/08/2003	Anthony Sanding	UTL 00072	2679
7590	07/21/2005		EXAMINER	
Kyocera Wireless Corp. P. O. Box 928289 San Diego, CA 92129-8289			SHEDRICK, CHARLES TERRELL	
			ART UNIT	PAPER NUMBER
			2687	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/657,476	SANDING, ANTHONY	
	Examiner Charles Shedrick	Art Unit 2687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) . Responsive to communication(s) filed on 08 September 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02. The oath or declaration is defective because:

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either on an application data sheet or supplemental oath or declaration.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 6, 8, 13-15, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Herle (U.S Patent Application Publication # 2004/0261073 A1).

Consider **claim 1**, Herle discloses a method for an over-the-air-programming session (abstract) comprising; a mobile subscriber unit 111 (**figure 1**) determining when the over-the-air session has ended (**figure 4 and 5**); and the mobile subscriber unit terminating an associated over-the-air programming call (**paragraphs 0046 and 0061**).

Consider **claim 2**, and as applied to **claim 1** above, Herle further discloses a method

wherein the over-the-air programming session is an over-the-air service provisioning session (i.e. software update) (**paragraph 0003,0045,0046,0060,0061**)

Consider **claim 3**, and as applied to claim 1 above, Herle further discloses a method wherein the over-the-air programming session is an over-the-air service parameter session (i.e., software update) (**paragraph 0003,0045,0046,0060,0061**).

Consider **claim 6** and as applied to claim 1 above, Herle further discloses a method comprising a mobile subscriber unit 111 (**figure 1**) detecting a condition (i.e. power intentionally or accidentally shut-off) associated with a failed over-the-air call release (i.e., the journal sectors log the release) (**paragraph 0058**).

Consider **claim 8**, Herle clearly shows and discloses a mobile subscriber unit 111 (**figure 1**), comprising: an end of session detector (**main processor 240**) (**figure 2**) configured to detect the end of an over the air programming session; and a call terminator (**main processor 240**) (**figure 2**) coupled to the end of session detector, the call terminator configured to terminate an over-the-air call when the end of session detector detects the end of the over the air programming session (i.e., the main processor is under the control of the update program. The main processor 240 determines whether there is more update software code, If no more SW remains the software update procedure ends) (**figures 4 and 5 paragraph 0045, 0046,0060, and 0061**).

Consider **claim 13**, Herle shows and discloses a wireless communication system 100 (**figure 1**) comprising; a plurality of base stations 101,102,103 (**figure 1**); a protocol for over-the air programming (i.e., mobile stations 111-114 can communicate over multiple access channels) (**paragraph 0017**) and a mobile subscriber unit 111 (**figure 1**); comprising end of session detector (**main processor 240**) (**figure 2**) configured to detect the end of an over-the –air

programming session **520 (figures 4 and 5)**; and a call terminator (**main processor 240**) (**figure 2**) configured to terminate an over-the-air call when the end of session detector detects the end of the over-the-air programming session (**figures 4 and 5 and paragraph 0045,0046,0060, and 0061**).

Consider **claim 14**, and **as applied to the system in claim 13 above**. Herle further discloses that the plurality of base stations **101-103** could include a digital base stations (i.e., communication line **131** may be any suitable connection means such as analog or digital which could inherently necessitate a digital vs. an analog base station **101-103**) (**pg 2. paragraph 0023**)

Consider **claim 15**, and **as applied to the system in claim 13 above**. Herle further discloses that the plurality of base stations **101-103** could include an analog base stations (i.e., communication line **131** may be any suitable connection means such as analog or digital which could inherently necessitate a digital vs. an analog base station **101-103**) (**paragraph 0023**)

Consider **claim 18**, and **as applied to claim 13**, Herle also shows a system **100** wherein a mobile subscriber unit **111 (figure 1)** further comprising a circumstance evaluator (**journal**) configured to detect a condition (e.g., loss of power) associated with a failed over the air call release (i.e., the journal tracks application updates on a sector by sector basis) (**paragraph 0038**).

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 4, 9, 11, and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herle (U.S Patent Application Publication # 2004/0261073 A1) in view of Mittal (U.S. Patent # 6,842,613 B2)

Consider **claim 4**, Herle discloses the claimed invention as applied to claim 1 above except that the step of detecting when an over-the-air session has ended does not comprise receiving an end of session message. In the same field of endeavor, Mittal discloses that the step of detecting when an over-the-air session (a download) has ended comprises of receiving an end of session message (**column 7 lines 43-47, column 8 lines 12-21, and column 9 lines 14-26**). Therefore, it would have been obvious at the time of the invention to include the end of session message, as taught by Mittal, in the method of Herle in order to efficiently detect the end of session.

Consider **claim 9**, Herle discloses the claimed invention as applied to claim 8 above except the end of session detector is not an end of session message detector. In the same field of endeavor Mittal clearly shows wherein the end of session detector is an end of session message

**detector (data message request detector 52) (figure 1 column 7 lines 43-47, column 8 lines 12-21, and column 9 lines 14-26).** Therefore, it would have been obvious at the time of the invention to include an end of session message detector as the end of session detector, as taught by Mittal, in the unit of Herle in order to efficiently detect the end of session.

Consider **claim 11, and as applied to claim 9 above**, Herle as modified by Mittal, also shows a mobile subscriber unit 111 (**figure 1**) further comprising a circumstance evaluator (**journal**) configured to detect a condition (loss of power) associated with a failed over the air call release (i.e., the journal tracks application updates on a sector by sector basis) (**pg 4. paragraph 0038**).

Consider **claim 16**, Herle as modified by Mittal, discloses the claimed invention as **applied to claim 13 above** except that the end of session detector is not an end of session message detector. In the same field of endeavor, Mittal discloses a communication system 10 wherein the end of session detector is an end of session message detector (**data message request detector 52**) (**figure 1 column 7 lines 43-47, column 8 lines 12-21, and column 9 lines 14-26**). Therefore, it would have been obvious at the time of the invention to include an end of session message detector as the end of session detector, as taught by Mittal, in the system of Herle in order to efficiently detect the end of session.

**Claims 5, 10, and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herle (**U.S Patent Application Publication # 2004/0261073 A1**) in view of Mittal (**U.S. Patent # 6,842,613 B2**) and further in view of Nodoushani (**U.S. Patent # 6,144,849**)

Consider **claim 5, 10, and 17 and as applied to claims 1, 8, and 13 above**. Herle

discloses the step of detecting when an over-the-air session has ended (**figures 4 and 5**).

However, Herle does not show when a session has ended comprises detecting that a time-out period has lapsed without receiving an over-the-air message from the end of session detector.

Mittal discloses an apparatus **50** (**figure 1**) comprising of a data message request detector **52** (**figure 1**) and a status reporter **54** (**figure 1**) capable of detecting indications of a data message request received at the receive portion (**column 7 lines 43–49**). Therefore, it would have been obvious at the time of the invention to include a end of session message detector, as taught by Mittal, as the end of session detector in the method, unit, and system of Herle in order to efficiently detect the end of session.

However, Herle as modified by Mittal does not show a method wherein the step of detecting when an over-the-air session has ended comprises detecting that a time-out period has lapsed without receiving an over-the-air message. In the same field of endeavor, Nodoushani discloses a method of termination based on a period (time-out) of inactivity (no message indicating end of session) occurs over the interface or if a session is open too long (**column 11 lines 1–6**). Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Herle and Mittal to include a time-out period for termination on the data message request detector **52** as taught by Nodoushani to efficiently terminate over-the-air programming calls.

**Claims 7, 19, and 20–22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Herle (U.S Patent Application Publication # 2004/0261073 A1)** in view of **Dahlin (U.S. Patent # 5,257,401)**.

Consider **claims 7 and 19**, as applied to claims **6 and 18** above. Herle discloses and shows a system comprising a plurality of base stations **101-103** comprising a digital base station; and an analog base station, a mobile subscriber unit (**mobile station 111**) (**figure 1**) and a method of detecting a failed over the air call release (i.e. power intentionally or accidentally shut-off) associated with a failed over-the-air call release (i.e., the journal sectors log the release) (**paragraph 0058**). Herle does not show where the detection comprises detecting a transition from an analog to digital network while engaged in an over-the-air programming call. Dahlin discloses a method of detecting a transition from an analog to digital network while engaged in an over the air programming call (**column 15 lines 26-68**) i.e., maintaining a connection (*over the air programming call*) while transitioning between digital and analog network. Therefore it would have been obvious at the time of the invention to include the method of detecting a transition from analog to digital as taught by Dahlin in the main processor 240 of Herle so that the current journal failure procedures could parallel failure procedures associated with transitioning from analog to digital for an enhanced recovery process.

Consider **claim 20**, Herle discloses a method for over the air programming session comprising beginning an over the air programming session involving a mobile subscriber unit (**mobile station 111**); the mobile subscriber unit determining when the over the air session has ended (**figures 4 and 5**); and the mobile subscriber unit terminating an associated over-the air programming call (**paragraph 0003, 0045, 0046, 0060, and 0061**).

Herle does not disclose a mobile subscriber unit transitioning from a digital network to an analog network while engaged in the over-the-air programming session.

Dahlin clearly discloses a mobile subscriber unit transitioning from a digital network to

Art Unit: 2687

an analog network while engaged in the over-the-air programming session (i.e. established connection) (**column 15 lines 26-68**). Therefore, it would have been obvious at the time of the invention to include the method of detecting a transition from analog to digital as taught by Dahlin in the method of Herle so that the current journal failure procedures could parallel failure procedures associated with transitioning from analog to digital for an enhanced recovery process.

Consider **claim 21**, Herle, as modified by Dahlin, clearly show and disclose the claimed invention **as applied to claim 20 above** and, in addition, Herle further discloses wherein the over-the-air programming session is an over-the-air service provisioning session (i.e., software update) (**paragraph 0003, 0045, 0046, 0060, and 0061**).

Consider **claim 22**, Herle, as modified by Dahlin, clearly show and disclose the claimed invention **as applied to claim 20 above** and, in addition, Herle further discloses wherein the over-the-air programming session is an over-the-air service provisioning session (i.e., software update) (**paragraph 0003,0045, 0046, 0060, and 0061**).

**Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Herle (U.S Patent Application Publication # 2004/0261073 A1) in view of Mittal (U.S. Patent # 6,842,613 B2), as applied to claim 11 above, and further in view of Dahlin (U.S. Patent # 5,257,401).

Consider **claim 12**, Herle as modified by Mittal does not show where the detection comprises detecting a transition from an analog to digital network while engaged in an over-the-air programming call. Dahlin discloses a method of detecting a transition from an analog to digital network while engaged in an over the air programming call (**column 15 lines 26-68**) i.e.,

Art Unit: 2687

maintaining a connection (*over the air programming call*) while transitioning between digital and analog network. Therefore, it would have been obvious at the time of the invention to include the step of detecting a transition from analog to digital as taught by Dahlin in the main processor 240 of Herle, as modified by Mittal so that the current journal failure procedures could parallel failure procedures associated with transitioning from analog to digital for an enhanced recovery process.

**Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Herle (U.S. Patent Application Publication # 2004/0261073 A1) in view of Dahlin (U.S. Patent # 5,257,401), as applied to claim 20 above, and further in view of Mittal (U.S. Patent # 6,842,613 B2).

Consider **claim 23**, Herle as modified by Dahlin, discloses the claimed invention as applied to claim 20 above except that the step of detecting when an over-the-air session has ended does not comprise receiving an end of session message. In the same field of endeavor Mittal discloses that the step of detecting when an over-the-air session (a download) has ended comprises of receiving an end of session message (column 7 lines 43-47 and column 8 lines 12-15). Therefore, it would have been obvious at the time of the invention to include the end of session message, as taught by Mittal, in the method of Herle, as modified by Dahlin, in order to efficiently detect the end of session.

**Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Herle (U.S. Patent Application Publication # 2004/0261073 A1) in view of Dahlin (U.S. Patent #

**5,257,401) as applied to claim 20 above, further in view of Mittal (U.S. Patent # 6,842,613 B2), and further in view of Nodoushani (U.S. Patent # 6,144,849)**

Consider **claim 24**, Herle as modified by Dahlin clearly teaches the claimed invention as **applied to claim 20 above and**, in addition Herle discloses the step of detecting when an over-the-air session has ended (**figures 4 and 5**).

Herle, as modified by Dahlin, does not show when a session has ended comprises receiving an over-the-air message from the end of session detector.

Mittal discloses an apparatus **50 (figure 1)** comprising of a data message request detector **52 (figure 1)** and a status reporter **54 (figure 1)** capable of detecting indications of a data message request received at the receive portion (**column 7 lines 43–49**). Therefore, it would have been obvious at the time of the invention to include an end of session message detector, as taught by Mittal, as the end of session detector in the method of Herle, as modified by Dahlin, in order to efficiently detect the end of session. Herle, as modified by Dahlin and Mittal, does not show a method wherein the step of detecting when an over-the-air session has ended comprises detecting that a time-out period has lapsed without receiving an over-the-air message. In the same field of endeavor, Nodoushani discloses a method of termination based on a period (time-out) of inactivity (no message indicating end of session) occurs over the interface or if a session is open too long (**column 11 lines 1-6**). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Herle, Dahlin, and Mittal to include a time-out period for termination on the data message request detector **52** as taught by Nodoushani to efficiently terminate over-the-air programming calls.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Leung** shows a method and apparatus for network initiated parameter updating. **Bilgic** also shows a communication control fro a user of a central communication center that discloses control such as termination of a task from the mobile phone that can be applied to parameter updating and changes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Shedrick whose telephone number is (571)-272-8621. The examiner can normally be reached on 730am-430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kincaid Lester can be reached on (571)-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles Shedrick  
Art Unit 2687  
7/5/05

  
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